IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 419 OF 1998

Shri Egidio Mendes,
aged 72 years, resident
of House No.725,
Dandeawaddo, Chinchinim,
Salcete, Goa. ... Petitioner.

versus

1. Village Panchayat of
   Chinchinim, having
   its Office at Chinchinim,
   Salcete, Goa.

2. Director of Panchayats,
   having its Office at
   Junta House, 18th June
   Road, Panaji, Goa.

3. Chief Town Planner
   having his Office at
   the Old Goa Medical College
   Building, Panaji, Goa.

4. State of Goa, through the
   Chief Secretary with
   Office at the Secretariat,
   Panaji, Goa.

5. Shri Patricio Octaviano Tadeo
   Rosario Coutinho, aged 37
   years, son of Roque Coutinho,
   resident of House No.623/A,
   F-1, Dandeawaddo, Chinchinim,
   Salcete, Goa. ... Respondents.

Mr. M. B. Da Costa and Mr. J. A. Lobo, Advocates for the Petitioner.

Mr. M. S. Sonak, Advocate for Respondent No.1.

Mr. H. R. Bharne, Government Advocate for Respondent Nos.2, 3 and 4.

Mr. S. D. Lotlikar, Senior Advocate with Mr. A. D. Bhobe, Advocate for Respondent No.5.

CORAM: F. I. REBELLO &
P. V. HARDAS,JJ.

DATED: 17TH JUNE, 2003.

ORAL JUDGMENT(PER P.V.HARDAS,J.)

This Petition has been filed by the Petitioner seeking in principle the relief of issuance of a writ of mandamus directing the Respondents to perform their statutory duties in respect of the construction licence issued to Respondent No.5 and the illegal contruction erected by Respondent No.5.

2. The brief facts as are necessary for the decision of this Petition are set out hereunder:-

The Respondent No.5 submitted an application to the Village Panchayat on 18th February, 1994 for permission to carry out the construction with the requisite plans showing the setbacks that are going to be maintained. The said application along with the plans was forwarded by the Village Panchayat i.e. Respondent No.1 to the Technical Officer for necessary approval on 25th February, 1994. The technical approval was given by the Technical Officer, P.W.D. by his letter dated 22nd March, 1994. Thereupon, the Village

Panchayat granted the licence to Respondent No.5 pursuant to a Resolution of the Panchayat taken on 15th April, 1994. During the pendency of the Petition, the Respondent No.5 has carried out the construction and Occupancy Certificate has also been issued to Respondent No.5.

3. In the affidavit, which is filed by the third respondent, it is stated that by Notification, dated 12th/17th January 1994, there was an amendment in the Appendix to the Goa, Daman and Diu Village Panchayats (Regulation of Buildings) Rules, 1971, thereby covering all the Village Panchayats in Goa within the sweep of the said Act. Prior to the issuance of the Notification, only those villages which were specified in Appendix 'A' to the said Rules were covered making it mandatory for obtaining the approval of the Town and Country Planning Department. The said Notification dated 12th/17th January 1994 was published in the Official Gazette, dated 3rd February 1994. The affidavit of the first respondent discloses that the Technical Officer, P.W.D., has approved the construction on 22nd March 1994. Accordingly, the licence, dated 27th July 1994, came to be issued to respondent no. 5 on 31st October 1994. The affidavit further discloses that the petitioner had filed a complaint after the issuance of the occupancy certificate. The respondent

no. 5 was asked to stop his construction. The respondent no. 5 had filed his reply and had pointed out that an occupancy certificate had been issued. Similarly, on 7th May 1996, in pursuance to the complaint of the petitioner, a show cause notice had been issued to the respondent no. 5 to show cause why the construction should not be demolished. Apparently the first respondent was satisfied and thereafter no action was initiated. It is also stated in the affidavit that up to 14th March 1994 not a single file relating to the application for construction was ever referred to the Town and Country Planning Department. The affidavit also discloses that the petition filed by the petitioner before the Director of Panchayats challenging the construction carried out by the respondent no. 5 came to be dismissed on 26th June 1996.

4. From the averments in the Petition itself, it appears that the Petitioner had filed Special Civil Suit No.312/1996/B in the Court of Civil Judge, Senior Division at Margao. The Plaintiffs had prayed for a declaration that the construction licence issued to Respondent No.5 is illegal, null and void. There was also a prayer clause for seeking a declaration that the construction of the suit building is illegal. The

Plaintiffs herein had also prayed for temporary injunction which came to be refused. The temporary ex-parte interim injunction came to be refused on the ground that a Civil Suit would not lie challenging the construction licence.

5. The learned Counsel appearing for the parties have invited our attention to a Judgment of this Court in **Smt.Fatima Joao** v. **Village Panchayat of Merces and others** reported in 2000(2) GLT 341. In the aforesaid Report, the Division Bench of this Court has held that a Civil Suit is maintainable. We are informed by the learned Counsel for the Petitioner that the Civil Suit filed by the Petitioner is pending.

6. Considering the larger relief sought as a Civil Suit is now maintainable in view of Judgment of this Court in **Smt. Fatima Joao** v. **Village Panchyat of Merces and others**(supra) and further as the Petition raises disputed questions of fact, we are of the considered opinion that this is not a fit case to invoke the extra-ordinary jurisdiction of this Court. Parties are at liberty to prosecute their dispute in the Civil Suit which is pending.

7. In the result, therefore, Writ Petition No.419

of 1998 is dismissed. Rule discharged with no order as to costs.

F. I. REBELLO, J.

P. V. HARDAS, J.

RD.